

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PETER MOMOT, individually and as Administrator of the Estate of Mark Momot,	:	CIVIL ACTION
	:	
	:	
Plaintiff,	:	NO. 11-cv-7806-JD
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, POLICE COMMISSIONER CHARLES RAMSEY, THE PHILADELPHIA POLICE DEPARTMENT, and PHILADELPHIA POLICE OFFICERS JOHN/JANE DOE 1-5,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 16th day of May, 2012, upon consideration of Defendant City of Philadelphia's Motion to Dismiss Counts III, IV and V and All Claims Against Commissioner Ramsey Pursuant to Federal Rule of Civil Procedure 12(b)(6) for Failure to State a Claim¹ (Document No. 3, filed January 24, 2012), and plaintiff's Brief in Opposition to Defendant City of Philadelphia's Motion to Dismiss Counts III, IV, and V Pursuant to Federal Rule of Civil Procedure 12(b)(6) for Failure to State a Claim (Document No. 4, filed February 15, 2012), for the reasons set forth in the Memorandum dated May 16, 2012, **IT IS ORDERED** that defendants' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART** as follows:

¹ Defendants' filing contained only a proposed order and a brief in support of the Motion to Dismiss; there was no motion. However, the Court construes defendants' filing as a motion to dismiss under Rule 12(b)(6). Further, although the title of defendants' brief states that only the City of Philadelphia moves to dismiss, the brief seeks dismissal of Counts III, IV, and V as to all defendants. Thus, the Court addresses defendants' motion as to all defendants.

1. Defendants' Motion to Dismiss is **GRANTED** as to Counts III, IV, and V; those Counts are **DISMISSED** as follows:

a. Count III is **DISMISSED WITH PREJUDICE**.

b. Counts IV and V **DISMISSED WITHOUT PREJUDICE** to plaintiff's right to amend the Complaint if warranted by the facts. Any amended complaint shall be filed and served on or before May 30, 2012. One (1) copy of any amended complaint shall be served on the Court (Chambers, Room 12613) when the original is filed.

2. Defendants' Motion to Dismiss is **GRANTED** as to all claims against the City of Philadelphia Police Department and all claims for punitive damages against the City of Philadelphia.

3. Defendants' Motion to Dismiss is **DENIED** in all other respects.

IT IS FURTHER ORDERED that Count II of plaintiff's Complaint is **DISMISSED WITH PREJUDICE**.

BY THE COURT:

/s/ Hon. Jan E. DuBois
JAN E. DUBOIS, J.